

OLC 77-5235

2 DEC 1977

MEMORANDUM FOR: All Morning Meeting Participants

FROM: George L. Cary
Legislative Counsel

SUBJECT: Report to the Senate on the Work of the SSCI
By Senator Daniel K. Inouye (D., Hawaii),
Chairman, SSCI

Attached is a report to the Senate from Senator Daniel K. Inouye on the work of the Senate Select Committee on Intelligence. It is not nearly as detailed as the Committee's first Annual Report, published in May 1977, but does make some interesting points. Some of the major points are:

- a. Intelligence Community abuses in the past were the result of the direction above, often with the knowledge of oversight committee Members;
- b. The nation owes a great deal to the Intelligence Community;
- c. With the support of the President and under the firm direction of Admiral Turner, the Community is now on track again after several years of turmoil;
- d. Intelligence is essential to the nation's security;
- e. Senator Inouye has had a rule that all information conveyed to him will be shared with every Member of the Committee.
- f. The provisions in S. Res. 400 (the Committee's charter) for handling and disclosure of classified information are sound, have worked well, and should be extended to all classified information provided to the Senate;

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g. Development of the new Executive Order on intelligence has been a unique joint effort between the Intelligence Community and the Committee. However, the most important work of the Committee lies ahead in the development of statutory charters;

h. No intelligence agency should be involved with working journalists, because the problem of playback into the United States outweighs possible gains;

i. The statutory charters under development will contain provisions to enable courts to handle classified information. The aim of the Committee is to eliminate the "national security loophole";

j. The greatest need within the Intelligence Community is for more cogent analysis;

k. Senator Inouye is resigning as Chairman and will be succeeded by Senator Birch Bayh (D., Ind.). Senator Inouye will recommend an amendment to S. Res. 400 limiting the Chairmanship to a two year term.

l. The President, in August of this year, lauded the Committee for security stating the Committee had a better security record than any other organization in the United States Government.

SIGNED

George L. Cary

Attachment:
As Stated

STAT

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United States Senate

SELECT COMMITTEE ON INTELLIGENCE

(PURSUANT TO S. RES. 450, 84TH CONGRESS)

WASHINGTON, D.C. 20510

November 18, 1977

Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C. 20505

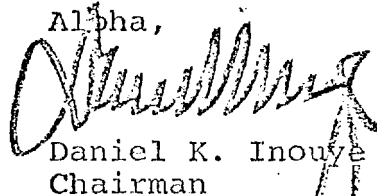
Dear Admiral Turner:

I would like to share with you my Report to the Senate on the work of the Senate Select Committee on Intelligence during the period of my Chairmanship.

As I approach the final weeks of service as Chairman of the Committee on Intelligence, I wish to thank you once again for your advice, counsel, cooperation and assistance. The success that the Committee has had in these crucial formative years has been aided measurably by your assistance.

With kind regards,

Alpha,


Daniel K. Inouye
Chairman

REPORT TO THE SENATE ON THE WORK OF THE
SENATE SELECT COMMITTEE ON INTELLIGENCE BY
SENATOR DANIEL K. INOUE, CHAIRMAN,
SENATE SELECT COMMITTEE ON INTELLIGENCE

As the first session of the 95th Congress draws to a close, it is appropriate to report to the Senate on the work of the Senate Select Committee on Intelligence.

I have had the honor to serve as Chairman of the Committee since it was formed on May 19, 1976. The Senate, in its Resolution 400, assigned to the Committee a broad range of duties, all of which were designed to carry out rigorous oversight of the intelligence activities of the United States Government. After a period of a year and a half, I am of the opinion that Senate Resolution 400 provides the necessary scope and the workable means for exercising vigilant legislative oversight over the intelligence activities of the United States.

In recent years the intelligence community, particularly the CIA and the FBI, have been the targets of suspicion and abuse. There is no question that a number of abuses of power, mistakes in judgment and failures by the intelligence agencies, have harmed the United States. We, of course, hope that these abuses are behind us and will not occur again. These events did not happen in a vacuum. In almost every instance, the abuses that have been revealed were a result of direction

from above, including Presidents and Secretaries of State. Further, in almost every instance, some members of both Houses of Congress assigned the duty of oversight were knowledgeable about these activities.

The recent Helms case illustrates this pattern. If Mr. Helms should be subject to public blame, as some contend, then others in higher authority in both the Executive branch and the Congress should also share the blame.

Every organization, whether the Congress, the White House, the CIA, corporations, universities or churches, are made up of men and women with their full share of excellences and failures. With the exception of a very small number who broke the law or failed in their trust, we owe a great debt to our intelligence community. It is made up of men and women of unusual dedication and ability who serve our country under the most difficult of circumstances. We can be proud that they have come through the trials of the past several years with a clearer sense of purpose and with a strengthened belief in the value of a life of service to our nation.

The intelligence community has been in a turmoil over the past few years. It has been the subject of a number of Congressional inquiries, internal investigations and intense criticism from the press and the public. With the support of the President and under the firm direction of Stansfield Turner, the intelligence community is in the process of creating a new organizational structure which should lead to more efficient coordination of its world-wide activities

and a better overall intelligence product. It is my view that the intelligence agencies of the United States are now functioning under strict guidelines set forth by the President and the National Security Council, which lay out clear missions, limitations and accountability, as well as rigorous oversight by both the House and the Senate. While many improvements and reforms are called for, it is my evaluation that the present quality of the work of the United States intelligence community is good, and shows every sign of becoming better.

I firmly believe that under our constitutional system, the license for the Executive branch to undertake secret intelligence activities requires a full awareness of the nature and detail of these activities by the Legislative branch. The abuses of power by the intelligence agencies revealed over the past few years make it clear that the Executive branch should not be authorized to undertake secret intelligence activities unless the Legislative branch, through its appropriate committees, is fully knowledgeable and concurs in the purpose of such intelligence activities.

The necessity for a large and extensive secret intelligence system imposes great demands upon our open democratic constitutional society. Secret intelligence activities, by their very nature, require that only a delegated few in the government, in both the Executive and Legislative branches, have detailed knowledge of the overall activities of our intelligence agencies.

I am convinced after my period of first-hand observation that much of the information produced by our intelligence system is not only useful but necessary to the nation's security and well-being.

It is perhaps not surprising that as Chairman of the Select Committee on Intelligence I have read my share of spy novels and books on the world of intelligence. There is one passage written by John Le Carré in an introduction to a book entitled The Philby Conspiracy that I find of almost daily pertinence to those of us who serve on the Committee:

. . . no secret service can be more clearheaded than its government. Everything rests upon a clearcut statement of requirements by those who formulate the nation's policy. If the Secret Service is properly used, it is a fighting arm, an extension of Government policy. But in times of dismay and national corruption it sinks swiftly into intrigue, slovenly security and inter-departmental rivalry.

The proper balance between maintaining the secrecy of information provided to it by the Executive branch, and the right of the public to know what its government is doing in its name has not been an easy issue for the Select Committee on Intelligence. Section 11 of S. Res. 400 gives to the Select Committee the right to full and complete information about all intelligence activities. No other legislature in the world has this right to secret information. The insistence that activities executed in the name of the United States by the Executive branch shall be known, approved, or modified by the Legislature, and the courts, as appropriate, has enabled

the American republic to survive as a vigorous, free society. In a democratic society some kinds of secret activities may not be possible because the circle of those who must know of the activities is relatively large. Our constitutional system of checks and balances and of shared responsibilities between the branches demands shared knowledge as well.

One requirement for effective oversight is the certainty that the Senate as a body has confidence in its delegated oversight committee. The Committee must reflect the views of the Senate as a whole and should not favor the policies or predispositions of those who may be in power at any given time. The present membership of the Committee reflects the full spectrum of Senate views from left to right. We are a non-partisan committee. As Chairman, I have made it a rule, which the President, Director of Central Intelligence, Stansfield Turner, and each of the Executive branch agencies understand, that whatever information conveyed to me will be shared with every member of the Committee. On occasion this sharing process may have caused some contemplated activities to be dropped. Such a result is a function of the oversight process.

The obverse of Congress' right to access to information is its duty to protect the valid secrets of our country, and to disclose validly classified information only in accord with an agreed-upon rational process of consultation. The Committee has made use of the process and thus far it has worked well to the satisfaction of both the Legislature and Executive that it is a fair and reasonable procedure.

In the past, one of the reasons given for not sharing sensitive information with the Congress is the fear that the Congress would not be able to keep confidences given to it. Without question, unauthorized disclosures have come from the Congress in the past and it is reasonable to expect they will occur in the future. It is also quite clear that in the past, most disclosures of sensitive information have come out of the Executive branch, including, on occasion, deliberate leaks from the highest authorities. Sometimes these leaks of information were intended as feelers to test public opinion; or in the worst cases, for narrow political purposes.

I am satisfied that the Senate Select Committee on Intelligence has demonstrated that it has the discipline necessary to protect the valid secrets of this country entrusted to it. We have met the challenge of proving that Congress can and will, with educated awareness of the substance and its fragility, with proper authority, and through reasonable procedures, keep the valid secrets entrusted to its care. We have done this in such a way that makes it possible for the most sensitive information to be made available to each of the one hundred Senators that make up the Senate.

As the Senate knows, the authorization bill and its report, which contain some of this country's most fragile and precious secrets, has been available to every Senator under the security provisions of S. Res. 400. Further, this Committee has made its reports available to other standing committees and other individual members as appropriate.

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In view of the demonstrated success of the formula for the handling of classified material and the process of determining the disclosure of valid national security information, I recommend to the Leadership and the Senate as a whole that the formula contained in S. Res. 400 be extended for all classified information provided to the Senate. I think this provides the requisite balance between the right of access and the corresponding duty to protect our nation's secrets.

The Committee has just completed work on a unique joint effort with the Executive branch on an Executive Order which will serve as an interim measure, as well as a blueprint for permanent statutes, which we hope will be passed sometime in the next year. Since July, Committee members and staff have worked with the Executive branch in the writing of this Executive Order. This joint effort marks a commitment on the part of President Carter and the Committee to work as closely as possible to set forth clearly the principal missions and purposes of our national intelligence system, and to provide for its governance under the Constitution and the laws.

I am convinced that the most important work of the Committee lies ahead -- the passage of statutory charters and guidelines which will place all the principal aspects of intelligence work under the governance of the Constitution and the law.

The Committee intends to recommend passage of a legislative charter which will contain a number of separate titles.

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The first title is a general charter authorizing the scope of our national intelligence activities. It focuses responsibility for national intelligence activities upon the Director of our national intelligence system, giving him the authorities necessary for the effective management and coordination required by our vast and diverse national intelligence system. It authorizes by statute (rather than by Executive Order) intelligence activities for the United States, but unlike the now-obsolete National Security Act of 1947, it specifically authorizes the collection of intelligence and covert action. The bill, however, is not a blank check for the intelligence community. Detailed procedures are provided for the review of clandestine activities. Certain forms of covert action are prohibited. For example, the employment of members of the clergy or journalists for intelligence purposes is barred.

By establishing clear responsibility and accountability, and by defining what the intelligence community can and cannot do, the first title of the National Act is intended to insure that intelligence activities are properly and effectively directed, regulated, coordinated, and administered and that these activities do not infringe upon individual rights protected by the Constitution and the laws of the United States. In addition to this general charter, there are, as separate titles, specific entity charters for the National Security Agency (NSA), the Central Intelligence Agency (CIA),

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and the counterintelligence activities of the Federal Bureau of Investigation (FBI). Further, there are titles which deal with the limitations upon intelligence activities which affect Americans overseas as well as in the United States.

During its work on charters over the last year and a half, the major issue that has faced the Committee concern the question of balancing between detailed specifications of what may or may not be done, and the need on the part of the intelligence agencies for a degree of flexibility to meet exigent circumstances.

I am certain that the public hearings held by the Committee over the next few months on charters will be of considerable national interest, particularly those hearings which deal with the relationships between the press and academics and the intelligence community. I have come to the conclusion that no intelligence agency should be involved with working journalists. The problem of the flowback of propaganda to the United States is a far greater danger than any benefits which might accrue from the services that a journalist working for an intelligence agency might be able to perform.

It is this kind of balancing question measured against the practical details of intelligence needs that lies at the heart of meaningful oversight. One of the limitations that

our constitutional democratic government imposes upon intelligence activities is the constraint imposed by the mores of our own society. We in America value a free and open press. This deeply held value must be reflected in legislation defining the limits upon the use of journalists by the intelligence community.

The major underlying premise for the Committee's work is that the most sensitive national security questions including secret intelligence activities can be resolved by our constitutional system and through regular constitutional processes. Full Congressional awareness of the nature, extent and details of intelligence activities and a process of rigorous oversight by an intelligence committee in both the House and the Senate is now a practical reality.

While the Congress has taken significant steps to fulfill its constitutional role and responsibilities to share in the governance of all activities of the United States Departments and Agencies including their secret activities, effective means have not yet been devised to enable the Courts to meet their constitutional responsibilities. Recent espionage cases, and the recent Helms decision underline the difficulties the Justice Department and the Courts have in the consideration of secret national security questions. It is clear that our judicial system must develop a better system of proceedings for classified intelligence matters or secret national defense or foreign policy questions. It will not be an easy task.

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The dangers of creating a Star Chamber must be avoided on the one hand; on the other hand, the vital national secrets should be protected from unnecessary disclosure.

The Committee intends to include in its statutory charters for intelligence activities provisions to enable the Courts to address more effectively cases involving classified information. In the next few months, hearings will be held calling upon the best advice that the legal profession can give: from the Justice Department, and other Departments and Agencies, the Courts, the law schools, from the Bar Associations, and from interested public groups and individuals. The Courts must be given the procedural means to do their part in the constitutional process. When this task is completed, we will have enabled the three branches to fulfill their duties in the area of secret national security matters and will have largely removed the "national security loophole" which has so strained our constitutional system.

Much attention has been focused upon the shadowy, glamorous and necessary world of secret agents. But by far the most significant and useful portion of our intelligence community is in the analyses and estimates they provide to our national leadership both in the Executive and the Congress and the solid information they give to our Executive departments and agencies. It is in this area that the Select Committee on Intelligence, I believe, will be able to serve the rest of the Senate in the

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future as a conduit to other Committees and individual Senators to do their assigned tasks. S. Res. 400 already places a duty upon the Select Committee to provide other Committees, individual Senators and the Senate as a whole, with information that comes to it which may also be of benefit to them.

For example, the Committee has been engaged in the past year on a study of the verification capabilities of the intelligence community. It is obvious that an authoritative objective study of our verification capabilities will be of use to the Senate when it takes up consideration of any future SALT Treaty. The Committee's study is being prepared with that duty and with that service in mind.

The intelligence community is now in a state of transition. The familiar romantic world of spies and counterspies, while still a vital necessity, is less central to our needs than our new technological means of collection. Without question, the United States government now has a vastly larger and more detailed data base of information with which to understand the world than a decade or two ago. There has been an information explosion in the world of intelligence just as there has been in other sectors of our society and government. It is not surprising, therefore, that the greatest need for improvement lies in the area of assuring more cogent analysis of this vast and burgeoning body of knowledge.

Further, there is a need for more rigorous analysis of political, economic, and cultural problems. This is not to say that military questions are less important; rather, it is only to assert that at the

and opportunities that face the United States are increasingly political, economic and cultural in character. One area that the Committee has been examining over the past year is the quality of our forecasts of worldwide crops and other vital materials and resources such as soil. It is problems of this kind that the Select Committee on Intelligence has been pressing the intelligence community to focus its efforts to improve the quality of its analytic work.

A very good example of the need for this new focus on a more universal approach to analysis, is in the area of arms control. I do not intend to diminish the great advances that have been made in analysis of military weapons intelligence. We have moved in the past 30 years from information derived primarily from spies to information gained largely from technical means: the U-2, satellites, and other technological marvels. The possibility for far more certainty about military events and for making more reasonable judgments about nuclear deployments is now greater than ever before. There is, for example, a direct correlation between the possibility of arms control agreements and the degree of verification that agreements will be observed. Our so-called national technical means of verification, that is, our satellites, made the SALT I agreement a reality, and further SALT agreements a real possibility. Without such means of acquiring accurate reliable military information, we would still be in an atmosphere dominated by

fear and uncertainty -- an atmosphere which characterized the early '50's, preparing for all-out war rather than seeking ways to reduce unnecessary arms.

But as we have come to know with more certainty, the nature and disposition of potential enemy forces, and as the doubts about the exact nature and quality of weapons capabilities recede, the questions of why military forces are assembled and for what reasons and purposes they might be used become more critical. Great advances have been made by our intelligence agencies in the "hard" areas of quantifiable information, but the so-called "soft" areas: the politics, the economics, the behaviour patterns of men and nations, deserve far more attention and the application of many of the methods used for hard subjects. Yet, the very fact that we are coming to grips with these questions, and that our attention is focused on this area is directly attributable to the improving quality and sophistication of our intelligence system. We have moved from a preoccupation with the fearful questions of mere survival to serious considerations of ways to devise political or economic means of resolving fundamental differences between such rivals as the Soviet Union or China. In this respect, the growth and increased importance of our intelligence system over the past 30 years has served to strengthen the possibilities of a continuing peace. And it has done so even as it has increased its abilities to detect quickly any movements by potential enemies towards war.

Although there is no specific rule in S. Res. 400, I have chosen to resign at the end of this session as Chairman. I am doing so because I believe rotation of Chairmanship is the best way to assure the combination of close detailed work with the agencies and a vigilant attitude toward their activities can be maintained. I am resigning because I believe it is important for the Senate and for the intelligence agencies who are under the charge of the Select Committee to have overseers who come to the issues as I have come to them -- with an open, fresh and relatively objective point of view, so necessary for the important task of oversight. An aware, yet detached point of view is necessary because the world of intelligence activities, as John Le Carré so cogently observed,

. . . spill over into almost every area of public life; its viability depends upon our tolerance, upon our money and to a sizeable extent, upon our complicity.

I would like to establish a precedent which would be reflected in an amendment to S. Res. 400, which would require a regular rotation of Chairmanship, as well as a limitation of the number of years members of the Committee may serve, which is already in the Senate Resolution. In my view, the Chairman of the Committee on Intelligence should not serve more than a two year term. It is my considered opinion

that this system of rotation of members and Chairmanship will serve to create a growing body of better informed Senators, as well as a legislative constituency that can speak authoritatively on the needs of the intelligence community.

As the first Chairman of the permanent intelligence oversight committee, I have found the task to be challenging, demanding, and extremely interesting. I do not give up this Chairmanship without regrets. But I think it is vital to ensure that the Chairman be objective and impartial. I believe one reason for the failure of congressional oversight in the past years was that too close a relationship developed between the intelligence agencies and their overseers.

Because the Committee began without any precedents and in a virtually unknown area, everything the Committee has done has been a pioneering effort. I think we have accomplished much in these first years.

In summary, for the first time, we have had a full and complete annual authorization for intelligence activities. We have examined in detail all of the intelligence activities of the United States, including a line-by-line review of the most sensitive activities such as covert action.

Effective oversight of the intelligence community requires the regular review of covert action projects and what are called sensitive collection programs. The Committee has devised a pattern of reviews on a quarterly basis, as well as a case-by-case review of all covert action programs approved by the President prior to their implementation.

Perhaps the most effective means of oversight is the authorization process. The power of the purse is the legislative body's most compelling means of working its will. In covert action, for example, the Committee, in its last authorization, voted on each project, yea or nay. This process of voting on detailed specific activities was carried out in every area of intelligence activity.

The Committee has had very heavy responsibilities but has earned the respect of the Executive branch and the intelligence agencies. In fact, the President, at our meeting with him at the White House on August 4, commended the Committee for its record of security saying that it was better than any other part of the United States Government.

The members have worked hard and I think we now have a staff of outstanding quality which is respected for its abilities and performance throughout the Government.

I want to thank my Vice Chairman, Senator Barry Goldwater for sharing the burden with me in the difficult yet gratifying work of this Committee. We have worked closely together on every Committee issue and I have gained much from his counsel and views.

I want to commend the work done by Senator Birch Bayh, who will be the next Chairman of this Committee, for the consistent and careful efforts made to protect the rights of Americans as they may be affected by intelligence activities. Senators Morgan, Garn, Moynihan, Case and Chafee have worked with Senator Bayh in this vital area.

Senator Hathaway has performed the very difficult task of putting together the first annual authorization for intelligence activities that has ever been presented to the Congress. It required months of hearings and an unusual devotion of time. This first authorization is the result of the time and effort of Senator Hathaway and his Subcommittee on Budget Authorization, Senators Wallop, Hart and Mathias.

Senator Dee Huddleston as Chairman and Senator Charles McC. Mathias as Vice Chairman of the Charters and Guidelines Subcommittee have been working with Senators Bayh, Stevenson, Biden, Garn and Lugar over the past year and a half, writing the legislation for the governance of the intelligence agencies. Senators Huddleston and Mathias have worked carefully and effectively with the Executive branch. It is our expectation that in most respects the draft statutory charter will have

the full support of the Executive branch. The 1947 National Security Act provided an inadequate statutory base for the intelligence activities of the United States. One reason for its inadequacies was that the Legislative branch was not significantly involved in the drafting of those authorities for intelligence activities. President Carter and Vice President Mondale have told the Committee at several meetings that the best interests of the country will be served by working as closely as possible in this very difficult area of national policy.

Senator Stevenson and his Subcommittee on the Quality of Intelligence have done outstanding analytic work on the product of our national intelligence system. The Vice Chairman of the Quality Subcommittee, Senator Case, and Senators Hart, Moynihan, Lugar and Wallop have supported this Subcommittee ably. The Subcommittee laid the foundations for use by other committees, other individual Senators, and the Senate as a whole, of intelligence information germane to the Senate's legislative duties. It is our hope that the work of this Subcommittee can be expanded with the view in mind of enabling the Senate as a whole to make the decisions it must make on the basis of the best possible fact and analysis.

Senator Biden has been working on the difficult question of secrecy with his Subcommittee, Senator Pearson, as Vice Chairman, and Senators Hathaway, Huddleston and Chafee. It is our hope that in the coming year comprehensive legislation

can be introduced to deal fairly and effectively with the problems of classification of national security information which has bedeviled the United States government for decades.

The burdensome task of investigations has been undertaken by Senator Morgan and his Subcommittee on Special Investigations, with Senators Goldwater and I serving with him. Senator Morgan's Subcommittee has established a pattern of careful, rigorous investigation which has served the Committee and the Senate well.

The Committee as a whole has taken on responsibility for examining major questions such as the oversight of covert action. It is my expectation that the Committee will continue to do so because of the obvious value that comes from the sharing of views and experience that a broadly-based Committee such as ours can offer.

I want to thank the Majority Leader, Senator Robert Byrd, and the Minority Leader, Senator Howard Baker, for the confidence and support they have given to me and the Committee while I have been Chairman.

It has been a privilege and an honor to serve the Senate as Chairman of this important Committee at the time of its creation.

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